डाक-व्यय की पूर्व अदायगी
के बिना डाक द्वारा भेजे जाने के
लिए अनुमत. अनुमति-पत्र
क्र. रायपुर-सी.जी.

पंजीयन क्रमांक रायपुर डिवीजन

छत्तीसगढ़ राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 24] रायपुर, शुक्रवार, दिनांक 2 फरवरी 2001—माघ 13, शक 1922

भारत निर्वाचन आयोग
ELECTION COMMISSION OF INDIA

CORAM

Hon'ble Shri J. M. Lyngdoh
Election Commissioner

Hon'ble Shri T. S. Krishna Murthy
Election Commissioner

Reference Case No. 3 (G) of 2000

[Reference from the Governor of Madhya Pradesh under Article 192(2) of the Constitution of India.]

In re : Alleged disqualification of Shri Tarun Prasad Chatterjee, former member of Madhya Pradesh Legislative Assemly, and now a sitting member of the Chhattisgarh Legislative Assembly.

OPINION

This is a reference, dated the 23rd June, 2000, received from the Governor of Madhya Pradesh, seeking the opinion of the Election Commission of India, under Article 192 (2) of the Constitution of India, on the question whether Shri Tarun Prasad Chatterjee, a then sitting member of the Madhya Pradesh Legislative Assembly, had become subject to disqualification, for being a member of that Assembly, under Article 191 (1) (a) of the Constitution of India. By virtue of the provisions of section 13 of the Madhya Pradesh Reorganisation Act, 2000, Shri Tarun Prasad Chatterjee is now deemed to be a sitting member of the Legislative Assembly of the new State of Chhattisgarh.

2. The above question arose on a petition dated 15.2.2000, made by one Smt. Kiranmayi Nayak of Raipur to the Governor of Madhya Pradesh, under Article 192 (1) of the Constitution of India. In the said petition, the petitioner alleged that Shri Tarun Prasad Chatterjee, who was elected as a member of the Madhya Pradesh Legislative Assembly from 127-Raipur (Rural) Assembly Constituency in 1998, had, on his becoming the Mayor of Raipur Municipal Corporation in January, 2000, become subject to disqualification for continuing as member of that Assembly, under Article 191(1) (a) of the Constitution. It was alleged that Shri Chatterjee had, on having become simultaneously the Mayor of Raipur Municipal Corporation, been enjoying the benefits of two posts. i.e., Mayor of Raipur Municipal Corporation and member of the Madhya Pradesh Legislative Assembly from 127-Raipur (Rural) Assembly Constituency, simultaneously. The petitioner alleged that the office of the Mayor of Raipur Municipal Corporation was an office of profit within the meaning of Article 191 (1) (a) of the Constitution of India. It was further alleged that the office of Mayor was not covered under any of the 19 items mentioned in the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, 1967 (No. 16 of 1967). It was stated that the offices mentioned in the said 19 items were of nominated category and not elective offices.

3. In his reply dated 17.8.2000. Shri Chatterjee refuted the allegation that he had become disqualified, contending that the office of the Mayor of Raipur Municipal Corporation was not an office of profit under the Government within the meaning of Article 191 (1) (a) of the Constitution.

4. On the request, both of the petitioner and the respondent, the Commission decided to hear the parties before tendering its opinion to the Governor of Madhya Pradesh in the matter. They were asked to appear before the Commission in person or through their counsel on 20.11.2000. At the hearing on 20.11.2000, the petitioner, Smt. Kiranmayi Nayak, appeared in person, and Shri Tarun Prasad Chatterjee, respondent, appeared through his counsel, Shri S. S. Ray, Senior Advocate.

5. Smt. Kiranmayi Nayak reiterated her arguments, as given in her petition and in the rejoinder filed by her in reply to counter-reply filed by the respondent. The petitioner has also contended that under Article 171 (3) (a) of the Constitution nearly one-third of the seats in the Legislative Council of a State, having such Council, are filled up by an electoral college consisting of the members of Nagar Nigams, District Boards and other local bodies as may be prescribed by law made by Parliament and that, from this point of view, elected members of Nagar Nigam are at par with the members of Legislative Council. According to her, under section 70 of the Representation of the People Act, 1951, if a person gets elected to both the Houses of Parliament, or to the State Legislature from more than one seat, then it is mandatory for him to resign all but one such seat.

6. The petitioner has further contended that the Supreme Court has held in *P. V. Narsimha Rao Vs. State, AIR 1998 SC 2120,* that the office held by a member of Parliament is an office of profit and the member has been treated as a public officer. She has further relied upon the decision dated 10.5.2000 of the High Court of Patna in Election Petition No. 5 of 1998, declaring the election of Sh. Shibu Soren to the Rajya Sabha as void on the ground that he was simultaneously holding the office of the Chairman, JAAC, which is an office of profit under the Government. She has also relied upon *Mata Prasad Anantram vs. Election Officer, Panchayat Election Office, Porsa and others* AIR 1971 M. P. 136, for her proposition that one person cannot perform the inherent duties of two posts simultaneously. She has also relied, in support of her above contention, on *Abdul Shakur vs. Rikhab Chand, AIR 1958 SC 52, Shivamurthy Swami vs. Aagadi Sanganna Andanappa 1971 (3) SC 870, Ravana Subanna vs. G.S. Kaggerappa AIR 1954 SC 653, Umrao Singh vs. Darbara Singh AIR 1969 SC 262.*

7. Shri S. S. Ray, learned Senior Counsel for the respondent, submitted that the respondent was not disqualified for being a member of the Legislative Assembly, in view of the Commission's opinion in re: Shri Edouart Goubert, 26 E.L.R. 297, in which the Commission held that the Mayor of Pondicherry was not holding office of profit under the Government within the meaning of Article 191 (1) (a). He further relied upon the constitutional provisions contained in Articles 243 P to 243 ZG with regard to local self government, the provisions of the Madhya Pradesh Municipal corporation Act 1956, the Madhya Pradesh Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam. 1967, and also on the above mentioned catena of decisions of the Supreme Court on which the petitioner had also placed reliance.

8. The Commission has carefully examined the written and oral submissions, both of the petitioner and the respondent. The petitioner's case is that the respondent cannot simultaneously hold the office of the Mayor of Raipur Municipal Corporation and membership of the Madhya Pradesh Legislative Assembly and that, on becoming the Mayor of Raipur in January, 2000, the respondent had become disqualified for continuing as a member of the Madhya Pradesh Legislative Assembly, under Article 191 (1) (a) of the Constitution. The respondent accepts that he is the Mayor of Raipur Municipal

Corporation, but refutes the contention of the petitioner that he has thereby become disqualified for membership of the Madhya Pradesh Legislative Assembly. His case is that the office of the Mayor of Raipur Municipal Corporation is not an office of profit under the Government of Madhya Pradesh, within the meaning of Article 191 (1) (a) of the Constitution.

9. According to Article 191 (1) (a) of the Constitution, a person shall be disqualified for being chosen as, and for being, a member of the Legislature of a State, if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by law by the Legislature of the State concerned not to disqualify its holder. Thus, a person shall be disqualified under the said Article, if (i) he holds an office; (ii) the office held by him is an office of profit; (iii) the office of profit held by him is an office under the Government of India or Government of any State; and (iv) the office of profit under the Government held by him, is not an office which has been declared by the State Legislature by law not to disqualify its holder. It is now well settled that in order to attract disqualification under Article 191 (1) (a), each of the aforesaid ingredients must be satisfied. Even if any one of the above ingredients is not satisfied in any given case, the person concerned will not be considered to have become disqualified under the aforesaid provision (see *Abdul Shakur Vs. Rikhab Chand AIR 1958 SC 52, Guru Govind Basu Vs. Sankri Prashad Ghosal, AIR 1964 SC 254; Shivamurthy Swami Vs. Agadi Sanganna Andappa, 1971 (3) SCC 870, etc.)*

10. The Constitution does not define the word 'office'. However, the Courts have interpreted the word to mean a position or place to which certain duties are attached, specially one of more or less public character (see *Smt. Kanta Kathuria Vs. Manak Chand Surana AIR 1970 SC 694)*. It is not disputed by any party in the present case that the post of the Mayor of Raipur Municipal Corporation is an 'office'. The Mayor is the Chairperson of Municipal Corporation and the Constitution itself refers to such position as 'office' in Article 243 T. Further, the Madhya Pradesh Municipal Corporation Act, 1956, which regulates the constitution and functioning of Municipal Corporation in Madhya Pradesh, including the matters relating to election of Mayors and Councillors of the Corporations, itself refers to the post of Mayor as office [see, for example, section 16 (4)].

11. The respondent denies that by holding the office of the Mayor of Raipur Municipal Corporation, he is making any profit, as he is entitled only to certain compensatory allowances. But his main contention is that the office of the Mayor of Raipur Municipal Corporation is not an office under the Government of India or of the Government of Madhya Pradesh. According to him, it is an elective office in which the Government, either at the Centre or of the State, has no say or control. He states that he has been chosen as the Mayor of Raipur Municipal Corporation, by direct election by the voters of the Raipur Municipal area under Section 9 (1) (a) of the Madhya Pradesh Municipal Corporation Act, 1956 (hereinafter referred to as the '1956 Act').

12. The tests to determine whether a person holds an office under the Government or not are now well laid down by the Supreme Court in a catena of cases, like, *Abdul Shakur Vs. Rikhab Chand, AIR 1958 SC 52; Guru Govind Basu Vs. Sankri Prashad Ghosal, AIR 1964 SC 254; Shivamurthy Swami Vs. Agadi Sanganna Andappa, 1971 (3) SCC 870; Bhagwati Prasad Dixit Ghorewala Vs. Rajiv Gandhi, AIR 1986 SC 1534, etc. The above mentioned tests have been succinctly summed up by the Supreme Court in Shivamurthy Swami Vs. Agadi Sanganna Andappa* (supra) as follows :

(i) whether the Government makes the appointment;
(ii) whether the Government has right to remove or dismiss the holder;
(iii) whether the Government pays remuneration;
(iv) what the functions of the holder are and whether he performs them for Government; and
(v) whether the Government has any control over the performance of these functions.

13. In the case of *Guru Govind Basu* (Supra), the Supreme Court laid down that:

> *..........where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under authority so empowered.*

14. Applying the above tests to the facts of the present case, it will be evident that the very first test, namely, whether the Government makes the appointment to the office, is itselt to be answered in the negative. As mentioned above, the Mayor of Raipur Municipal Corporation is elected directly by the voters of Raipur Municipal Corporation area under section 9 (1)

(a) of the 1956-Act. Once so elected as Mayor by the voters of Raipur, his appointment is not subject to the approval of the Government. Therefore, he is not appointed by the Government of Madhya Pradesh, but is directly elected. He cannot also be removed or dismissed from that office by the Government, as per its own will or discretion. He can be removed from that office, only by way of no-confidence motion passed by the elected Councillors of the Municipal Corporation in the manner prescribed in section 24 of the said 1956-Act. The respondent, therefore, does not serve as the Mayor of Raipur Municipal Corporation during the pleasure of the State Government. Thus, the second test, namely, whether the Government has the right to remove or dismiss the respondent, has also to be answered against the petitioner and in favour of the respondent.

15. In view of the foregoing, it is manifestly clear that the State Government of Madhya Pradesh has neither any power to appoint the Mayor of Raipur Municipal Corporation, nor any power to dismiss or remove him from that office.

16. Having regard to the answers to the first two basic tests, as laid down by the Supreme Court, it is unnecessary to go into the further tests as to whether the Mayor of Raipur Municipal Corporation is paid any remuneration by the Government, which makes it an office of profit, or whether he performs any functions for the Government or whether the Government has any control over the performance of his functions as Mayor.

17. The Commission is fortified in its above view by the observations of the Supreme Court in *Bhagwati Prashad Dixit Ghorewala Vs. Rajiv Gandhi* (AIR 1986 SC 1534) that the members of the House of the People, who are elected by the people, are not the holders of office under the Government. The reliance placed by the petitioner on *P. V.Narsimha Rao Vs. State,* AIR 1998 SC 2120 is misplaced. In that case, the Supreme Court has held that a member of Parliament holds an office and is a public servant within the meaning of the Prevention of Corruption Act, 1988. But the apex Court has not held that it is an office under the Government, as that question is already settled by that Court in *Rajiv Gandhi's case* (supra). Similarly, the case of Sh. Shibu Soren, relied upon by the petitioner, is also not of any help to her, as in that case the Patna High Court itself has held that the position would have been different had Shri Soren been holding an elective office under the JAAC. Further, the judgment of the High Court in the said case has been stayed by the Supreme Court.

18. It, therefore, logically follows that a person holding the elective office of the Mayor of Raipur Municipal Corporation cannot be said to be holding an office under the Government of Madhya Pradesh, within the meaning of Article 191 (1) (a) of the Constitution.

19. The petitioner has also contended that a person cannot hold two offices simultaneously and derive profit from both of them. The above contention of the petitioner cannot be accepted as a general proposition of law, universally applicable in all cases. The disqualifications for being chosen, or continuing, as a member of Parliament or of a State Legislature are specifically laid down in the Constitution and the statutory law. The Commission cannot add to, or substract from, any of those disqualifications laid down by the Constitution and the law. Where the Constitution or the law considered that a person shall not hold two offices of profits simultaneously, it has itself specified those offices of profit and prohibited the simultaneous membership thereof, namely, offices of President and Vice-President of India vis-a-vis membership of Parliament or of a State Legislature or an office under the Government of India or any State Government or under any local authority subject to the control of any Government [see Articles 58 (2), 59, 66 (2) and 66 (4)]; simultaneous membership of both Houses of Parliament or of a State Legislature [see Articles 101 (1) and 190 (1) and sections 68 and 69 of the Representation of the People Act, 1951]; simultaneous membership of Parliament and a State Legislature or of more than one State Legislature [see Articles 101 (2) and 190 (2)]; simultaneous election to more than one seat in any House of Parliament or a State Legislature (Section 70 of the Representation of the People Act, 1951). The office of Mayor of a Municipal Corporation is nowhere specified as an office which cannot be held simultaneously with the membership of a State Legislature.

20. It may be pertinent to add that a similar question was raised before the Commission in re: Shri Edouart Goubert (reported in Election Law Reports, Vol. 26, page 297). In that case, Shri Goubert was elected as a member of the Legislative Assembly of Pondicherry in July 1959 and subsequently, at the Municipal Election held on 29th October 1961, he was elected as member of Pondicherry Municipal Council and a few days later he was elected as the Mayor of Pondicherry. This Commission, after examining the matter in detail, held as follows :—

> "The question to consider is therefore whether, in the circumstances detailed above, the office of the Mayor of Pondicherry is (i) an office of profit, and (ii) under the Government of Pondicherry. It can be argued that the monthly allowance of Rs. 250/- is essentially a compensatory allowance which would just enable the Mayor to meet the

heavy expenses of entertainment normally devolving on a dignitary in that position. Even assuming that there might be a small balance left over which is technically sufficient to make the office one of porfit it is clear that the Mayor is not indebted to the Government in any way for securing the office. He is elected Mayor by a body of Municipal Councillors all of whom are themselves elected by the citizens. In order to become effective, the election does not require the approval or concurrence of the Government. Neither the power of control over the Mayor vested in the Government, nor even the power of dismissal which would obviously be exercisable only in extreme case and for good and sufficient reason, would, in my opinion, be sufficient to make an elective office of this type fall in the category of offices under the Government."

21. In view of the foregoing, the Commission is of the considered opinion that Shri Tarun Prasad Chatterjee, a then sitting member of the Madhya Pradesh Legislative Assembly, had not become subject to disqualification on his becoming the Mayor of Raipur Municipal Corporation in January, 2000. Accordingly, the Commission hereby tenders its opinion to the above effect to the Governor of Madhya Pradesh.

22. A copy of the present opinion of the Commission may be forwarded to the Governor of Chhattisgarh also, as Shri Tarun Prasad Chatterjee is now a sitting member of the Chhattisgarh Legislative Assembly, under the provisions of the Madhya Pradesh Reorganisation Act, 2000, as aforesaid.

Sd./-
(J. M. LYNGDOH)
ELECTION COMMISSIONER

Sd./-
(T. S. KRISHNA MURTHY)
ELECTION COMMISSIONER

New Delhi,

Dated : 4th January, 2001.

नियंत्रक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2001.